IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6627 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ STATE ROAD TRANSPORT CORPN

Versus

S G CHHARA

Appearance:

1. Special Civil Application No. 6627 of 1986

MRS VASAVDATTA BHATT for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/11/2003

ORAL JUDGEMENT

By filing this petition under Article 227 of the Constitution of India, the Gujarat State Road Transport

Corporation has challenged the order passed by the Labour Court, Surat, dated 19th July, 1986 in Reference (LCS) No.447 of 1984. The respondent herein was appointed as a conductor by the Corporation. He was subjected to departmental proceedings on the ground of alleged misconduct of not issuing tickets to certain passengers even though he has collected the fare. The incident in question occurred on 12th May 1981. At the time when the petitioner was on duty in a bus, the checking staff of the Corporation inspected the bus and at that time it was found that about seven passengers who were travelling to a particular destination were not given the tickets. The total amount is Rs.2.45 ps. After conclusion of the inquiry, the workman was removed from service. The departmental appeals preferred by the respondent-workman were also dismissed by the respective appellate authorities. The respondent-workman thereafter raised an industrial dispute. The said dispute was referred to the Labour Court, Surat, for adjudication and the said reference was numbered as Reference (LCS) No.447 of 1984.

2 The Labour Court, after hearing both the sides and after considering the evidence on record, came to the conclusion that the misconduct in question is of a trifle nature. The Labour Court also considered the past record of the respondent-workman and ultimately substituted the penalty of removal from service to withholding of one increment with future effect. Before the Labour Court the concerned workman had given a purshis to the effect that he is not claiming any back wages for the intervening period. Considering the aforesaid aspect, the Labour Court did not grant any back wages to the respondent-workman. The said order of the Labour Court, by which the respondent-workman was ordered to be reinstated in service, is challenged by the ST Corporation by filing this Special Civil Application. The Special Civil Application was admitted by this Court in the year 1986 and at that time the Corporation had already complied with the order of reinstatement by reinstating the respondent-workman on his original post subject to the result of this petition. The respondent-workman is accordingly in service since 1986.

3 At the time of hearing of this petition, the learned advocate Mrs Bhatt submitted that since the misconduct of a serious nature is proved against the concerned workman, the Labour Court should not have passed the order of reinstatement. It is argued by the learned advocate that the past record of the concerned workman was also bad, as he was found to have indulged in financial irregularities for 14 times. She further

submitted that the reasoning given by the Labour Court is absolutely unsustainable and this is not a case in which the Labour Court should have exercised the powers under Section 11A of the Industrial Disputes Act. The learned advocate Mr Rathod on the other hand submitted that the concerned workman is already reinstated in service since 1986 and therefore this Court now may not disturb the aforesaid order after such a long time. Mr Rathod further submitted that even in the past, the petitioner was subjected to enquiry in connection with some procedural lapse of not issuing the tickets to the passengers as the bus was overcrowded. He submits that so far as the present misconduct is concerned, there was no intention on his part to misappropriate the amount but only because of negligence he could not issue the tickets promptly.

4. I have heard both the learned advocates and I have gone through the award passed by the Labour Court. Reading the order of the Labour Court, in my view, the Labour Court has merely decided the reference as per its personal views and the reasoning given by the Labour Court is not satisfactory. It may be true that the amount in question is only Rs.2.45ps but the fact remains that the past record of the respondent-workman is also not satisfactory. Unfortunately, the Labour Court has not properly applied the provisions of Section 11A of the Industrial Disputes Act and in the instant case powers of Section 11A are, in fact, misapplied. At most of the places in the judgement, the Labour Court has tried to bring its personal knowledge and personal philosophy. If in a given case the Labour Court decides to give the benefit of Section 11A, it is required to give appropriate reasons for the same. The Labour Court has completely overlooked the fact that even in the past the concerned workman was subjected to departmental inquiries in which he was punished for not issuing the tickets to the passengers. The conductor in the bus is employed for the purpose of collecting the fare honestly. If in a given case he fails to issue ticket to the passenger, it cannot be treated to be a mere trifle omission on his part. The entire reasoning of the Labour Court is absolutely halfhearted. In the concluding part of the award, the Labour Judge has observed that the benefit of social legislation may not be available to the workman repeatedly and the Labour Court hoped that the respondent will serve the institution with honesty and integrity. Mr Rathod, however, vehemently argued that after 1986, the service record of the respondent-workman is unblemished and now after reinstatement, the respondent

is serving the Corporation sincerely and satisfactorily for the last about 17 years. Considering the fact that the ST Corporation has decided to reinstate the workman and the concerned workman is in service since last 17 years, in my view, even though the order of the Labour Court is difficult to sustain, yet, the order of reinstatement is not to be disturbed. However, the workman cannot go with a trifle penalty of stoppage of one increment with future effect, which is awarded by the Labour Court. Considering this aspect of the matter, Mr Rathod has also submitted that this Court may enhance the penalty appropriately. Considering the facts and circumstances of the case and considering the fact that this matter is pending for the last 16 years and considering the fact that the respondent is already reinstated in service in the year 1986, without disturbing the order of the Labour Court, though with hesitation, the same is confirmed with a substitution of penalty of stoppage of three increments with future effect instead of stoppage of one increment with future effect. Considering the nature of the misconduct as well as the past record, the ST Corporation is also permitted to even transfer the respondent-workman from the post of conductor if it thinks fit. The rest of the order of the Labour Court is confirmed. The petition is partly allowed. Rule is made absolute accordingly with no order as to costs. It is clarified that the since the petitioner-corporation has reinstated the respondent-workman in service, the respondent is entitled to regular salary in accordance with the rules.

(P.B. Majmudar, J.)

*mohd